

California Environmental Protection Agency



DRAFT

Proposed Regulations for Portable Fuel Containers

December 31, 1998

– DRAFT –

PROPOSED

REGULATONS FOR PORTABLE FUEL CONTAINERS

Adopt Title 13, California Code of Regulations, Chapter 9 Off-Road Vehicles and Engines Pollution Control Devices, Sections 2470 – 2478 to read as follows:

Chapter 9 Off-Road Vehicles and Engines Pollution Control Devices

Article 6 Portable Fuel Containers

2470. Applicability

Except as provided in Section 2473, this article applies to any person who sells, supplies, offers for sale, or manufactures portable fuel containers for use in the state of California.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2471. Definitions

For the purpose of this article, the following definitions apply:

- (1) ASTM means the American Society for Testing and Materials.
- (2) Consumer means the first person that in good faith purchases a new portable fuel container for purposes other than resale, including but not limited to personal, family, household, or institutional use.
- (3) Distributor means any person to whom a portable fuel container is sold or supplied for the purposes of resale or distribution in commerce. Manufactures, retailers, and consumers are not distributors.

- (4) Executive Officer means the Executive Officer of the Air Resources Board, or his or her delegate.
- (5) Gasoline means any petroleum distillate or liquid fuel having a Reid vapor pressure of four pounds or greater.
- (6) Manufacturer means any person who imports, manufactures, assembles, packages, repackages, or relabels a portable fuel container.
- (7) Nominal Capacity means the volume indicated by the manufacturer that represents the maximum filling level.
- (8) Permeation means the process by which individual fuel molecules penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.
- (9) Person has the same meaning as defined in Health and Safety Code Section 39047.
- (10) Portable Fuel Container means any container or vessel with a nominal capacity of six gallons or less intended for reuse that could be used, designed for, or capable of transporting gasoline from a fuel distribution point to a point of use by a consumer.
- (11) Product Category means the applicable category which best describes the product with respect to both its nominal capacity and material construction, as determined by the Executive Officer.
- (12) Retailer means any person who owns, leases, operates, controls, or supervises a retail outlet.
- (13) Retail Outlet means any establishment at which portable fuel containers are sold, supplied, or offered for sale.
- (14) Spill-Proof System means any configuration of portable fuel container and firmly attached spout that complies with all of the specified performance standards in Section 2472.
- (15) Spout means a tubular projection that can be firmly attached to a portable fuel container for conducting pouring through which the contents of the portable fuel container can be dispensed.
- (16) Sufficient Level means an adequate amount approaching but not exceeding the total liquid volume of the target fuel tank.

- (17) Target Fuel Tank means the fuel tank that receives fuel from the portable fuel container.
- (18) ROG (Reactive Organic Gas) means a reactive chemical gas, composed of hydrocarbons, that may contribute to the formation of smog. Also sometimes referred to as Non-Methane Organic Compounds (NMOC's).

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2472. Performance Standards for Portable Fuel Containers.

- (a) Except as provided in Section 2473, no person shall sell, supply, offer for sale, or manufacture for sale in California on or after January 1, 2001, any portable fuel container which, at the time of sale or manufacture, does not meet all of the following Performance Standards of Spill-Proof systems as specified in (1) through (6) below:

Performance Standards

- (1) An automatic shut-off stops the fuel flow when the target fuel tank reaches a sufficient level.
- (2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not in use.
- (3) Only one opening for both filling and pouring.
- (4) Provides a minimum fuel flow rate of not less than one gallon per minute for portable fuel containers with a nominal capacity less than or equal to 2.5 gallons, and a minimum fuel flow rate of not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.
- (5) Does not exceed a permeation rate of 0.2 grams for any twenty four-hour period as determined by (TM XX).
- (6) Warranted for a period of one year against defects in materials and workmanship.

- (b) As required, the Executive Officer shall coordinate compliance procedures with these Performance Standards with:
 - (1) California State Fire Marshal (SFM)
 - (2) California Department of Industrial Relations,
Division of Occupational Safety and Health (DOSH)

Compliance with the Performance Standards does not exempt the spill-proof system from compliance with other applicable codes and regulations such as state fire codes, safety codes, and other safety regulations.

- (c) Notwithstanding the provisions of section 2472 (a), a portable fuel container manufactured before January 1, 2001, may be sold, supplied, or offered for sale until January 1, 2002 if the date of manufacture or representative date is clearly displayed on the portable fuel container. An explanation of the date code shall be filed with the Executive Officer.
- (d) If the Executive Officer finds any manufacturer offering for sale in the State of California a portable fuel container that does not substantially comply with the requirements set forth in this article, the manufacturer will be subject to being enjoined from any further sales, or distribution, of such noncompliant portable fuel containers, in the State of California pursuant to Section 43017 of the Health and Safety Code. Additional penalties may be assessed to the extent permissible under Part 5, Division 26 of the Health and Safety Code. Before seeking remedial action against the portable container manufacturer, the Executive Officer will consider any information provided by the portable container manufacturer.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2473. Exemptions

- (a) This article does not apply to any person who manufactures portable fuel containers in California for shipment, sale, and use outside of California.
- (b) The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in California a portable fuel container that does not comply with the Performance Standards specified in Section 2472, as long as the manufacturer or distributor can demonstrate both that the portable fuel container is intended for shipment and use outside of California, and that the manufacturer or distributor has

taken reasonable prudent precautions to assure that the portable fuel container is not distributed to California. This subsection (b) does not apply to portable fuel containers that are sold, supplied, or offered for sale by any person to retail outlets in California.

- (c) This article does not apply to Type I and Type II portable tanks meeting the requirements of and containing products authorized by Chapter 1, Title 49, of the Code of Federal Regulations (DOT Regulations), or NFPA No. 386, Standard for Portable Shipping Tanks.
- (d) This article does not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2474. Innovative Products

- (a) The Executive Officer may exempt a portable fuel container from the requirements of Section 2472 if a manufacturer demonstrates by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in fewer ROG emissions as compared to the emissions from a representative portable fuel container.
- (b) For the purposes of this section, "representative portable fuel container" means a portable fuel container which meets the Performance Standards specified in Section 2472 and, based on tests as specified in Section 2477 and concurred with by the Executive Officer, has similar efficacy as other complying portable fuel containers in the same product category.
- (c) A manufacturer (applicant) must apply in writing to the Executive Officer for an innovative product exemption claimed under subsection (a). The application must include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document durability of the product in actual usage. In addition, the applicant must provide any information necessary to enable the Executive Officer to establish enforceable conditions for granting the exemption. All information including proprietary data submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in Title 17, California Code of Regulations, Sections 91000-91022.

- (d) Within 30 days of receipt of the exemption application the Executive Officer shall determine whether an application is complete as provided in section 60030 (a), Title 17, California Code of Regulations.
- (e) Within 90 days after an application has been deemed complete, the Executive Officer shall determine whether, under what conditions, and to what extent, an exemption from the requirements of Sections 2472 will be permitted. The applicant and the Executive Officer may mutually agree to a longer time period for reaching a decision. An applicant may submit additional supporting documentation before a decision has been reached. The Executive Officer will notify the applicant of the decision in writing and specify such terms and conditions that are necessary to ensure that emissions from use of the product will meet the emissions reductions specified in subsection (a), and that such emissions reductions can be enforced.
- (f) In granting an innovative product exemption for a portable fuel container, the Executive Officer shall specify the test methods for determining conformance to the conditions established. The test methods may include criteria for reproducibility, accuracy, and sampling and laboratory procedures.
- (g) For any portable fuel container for which an innovative product exemption has been granted pursuant to this section, the manufacturer shall notify the Executive Officer in writing within 30 days of any change in the products design, delivery system, or other factors which may effect the ROG emissions from recommended usage, and shall also notify the Executive Officer within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Executive Officer in support of the exemption application.
- (h) If the Performance Standards specified in Section 2472 are changed for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this subsection (i), shall have no force and effect as of the effective date of the modified Performance Standards.
- (i) If the Executive Officer believes that a portable fuel container for which an exemption has been granted no longer meets the criteria for an innovative product specified in subsection (a), the Executive Officer may hold a public hearing in accordance with the procedures specified in Title 17, California Code of Regulations, Subchapter 1.25, to determine if the exemption should be modified or revoked.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2475. Administrative Requirements

- (a) Each manufacturer of a portable fuel container subject to and complying with Section 2472 must clearly display the phrase “California Spill-Proof Container” on each spill-proof system, any sticker or label affixed thereto, and on any accompanying package.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2476. Variances

- (a) Any person who cannot comply with the requirements set forth in Section 2472, due to extraordinary reasons beyond the person’s reasonable control, may apply in writing to the Executive Officer for a variance. The variance application must set forth:
 - (1) the specific grounds upon which the variance is sought;
 - (2) the proposed date(s) by which compliance with the provisions of Section 2472 will be achieved, and
 - (3) a compliance report reasonably detailing the method(s) by which compliance will be achieved.
- (b) Upon receipt of a variance application containing the information required in subsection (a), the Executive Officer shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in Section 2472 is necessary and will be permitted. A hearing will be initiated no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing must be sent to the applicant by certified mail not less than 30 days before to the hearing. Notice of the hearing must also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such a notice, not less than 30 days before the hearing. The notice must state that the parties may, but not need to be, represented by counsel at the hearing. At least 30 days before the hearing, the variance application must be made available to the public for inspection. Interested members of the public must be allowed a reasonable opportunity to testify at the hearing and their testimony must be considered.

- (c) No variance may be granted unless all of the following findings are made:
- (1) that, due to reasons beyond the reasonable control of the applicant, required compliance with Section 2472 would result in extraordinary economic hardship.
 - (2) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance.
 - (3) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.
- (d) Any variance order shall specify a final compliance date by which the requirements of Section 2472 will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Executive Officer, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.
- (e) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.
- (f) Upon the application of any person, the Executive Officer may review, and for good cause, modify or revoke a variance from requirements of Section 2472 after holding a public hearing in accordance with the provisions of subsection (b).

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2477. Test Methods

- (a) Testing to determine compliance with the requirements of this article, must be performed by using the following analytical methods which are incorporated by reference herein:
- (1) ASTM F15.10 with the following exception: 4.2.13 is amended to read “Three spouts shall have flow rates not less than one gallon per minute for portable fuel containers with a nominal capacity less than or equal to 2.5 gallons, and flow rates not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons when tested to 5.13.”

- (2) ASTM F852 with the following exception: 4.8.2 is amended to read
“Permeability – This requirement applies only to nonmetallic containers.
The filled container shall not have a weight loss greater than 0.2 % when
tested in accordance with 7.6.”
- (b) Alternative methods that are shown to be accurate, precise, and appropriate may
be used upon written approval of the Executive Officer.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety
Code. Reference: Sections 43013, and 43018, Health and Safety Code.

2478. Severability

Each part of this article is deemed severable, and in the event that any part of this
article is held to be invalid, the remainder of this article continues in full force and
effect.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43018, Health and Safety
Code. Reference: Sections 43013, and 43018, Health and Safety Code.